



A Consumer's Guide to Idaho Lawyers

Developed in cooperation with the Idaho Supreme Court Committee to Increase Access to the Courts and the Professionalism & Ethics Section of the Idaho State Bar, Fall 2000

The law affects almost everything we do--from making a purchase, to driving a car, to interacting with others. This complexity opens up a bewildering variety of choices:

- When do you need a lawyer?
- How do you deal with a lawyer?
- When can you handle a matter on your own?

The purpose of this publication is to help you make the best choices in each situation.

What is a Lawyer?

A lawyer (also called an attorney--there's no difference) is a professional who is licensed to advise and represent others in legal matters. Nearly half of all lawyers are under 35 years old; the number of women lawyers has increased substantially in recent years. (40% of law students are now women.) Before being allowed to practice law in Idaho, a person must ordinarily 1) complete three years at an accredited law school; 2) pass the Idaho bar examination; 3) prove that they are a person of good moral character in order to be admitted to practice by the Idaho Supreme Court.

Each state has its own admission requirements, so a license to practice in one state does not authorize an attorney to practice in another state.

When Do You Need to Hire a Lawyer?

Unless your problem is clearly so serious that it can only be resolved with the assistance of a lawyer, you should first consider other sources of help:

- **Government and Consumer Complaint Agencies** -- such as the Better Business Bureau, the consumer credit counseling groups, and the Attorney General's Consumer Protection Division.
- **Counseling** -- Sometimes problems that seem to be "legal" may be helped or prevented through guidance and counseling offered by the Department of Health and Welfare, from private counselors, or members of the clergy.
- **Small Claims Court** -- In Idaho you can represent yourself in the Small Claims Division of Magistrate Court for disputes involving less than \$4,000.
- **Other Professionals** such as your insurance agent, banker, accountant, real estate broker, or stockbroker may be able to assist you with non-legal questions and issues.
- The **Court Assistance Office** can help with any civil matter and specializes in assistance with divorce, paternity, parenting plan agreement/modification, child support modification, name change, domestic violence, and small claims. Visit their website at: <http://www2.state.id.us/cao/index.html>

At other times, lawyers should definitely be consulted. When dealing with most legal issues, an ounce of prevention is worth many dollars and anxious hours of cure. And, once you have determined that you need professional legal help, get it promptly. A lawyer can do the most good for you if you are in touch with him or her early in the process.

Common situations for which a lawyer should definitely be consulted are:

- you are **being sued**
- you have been **arrested** or charged with a serious criminal or traffic offense
- you have been involved in an **accident** resulting in **personal injury** or **property damage**
- you are planning on **adopting a child**
- you wish to file for **bankruptcy**
- you are planning to **purchase a home** or other **real property**
- you are **starting, selling, or closing down a business**

Today, because the law is so complex, many lawyers limit their practice to one or two areas such as divorce, wills and estates, personal injury, or real estate. In Idaho, some lawyers are designated as "specialists" in specific areas of practice. The more complicated or contested your case, the more important it is to hire a lawyer with proven experience in that field.

How to Choose a Lawyer

Ask around. The traditional way to find a lawyer has always been word of mouth. Ask members of your family, friends, or co-workers about lawyers they've hired for a case similar to yours.

Many lawyers now list their areas of practice in the **telephone directory** or advertise directly to the public. Another resource is the Martindale-Hubbell Law Directory found in most libraries.

Finally, the Idaho State Bar (ISB) operates a **Lawyer Referral Service** that will match you with an attorney in your area of the state who handles the kind of case you have. The referral itself is free of charge and you receive a reduced charge for your first half hour consultation. Call the ISB Lawyer Referral Service at (208) 334-4500. The lawyers are all members in good standing of the Idaho State Bar, but are not "rated." They voluntarily sign up for the Lawyer Referral Service and indicate the areas of law in which they will accept referrals.

When you contact a lawyer, do not hesitate to ask questions. It is important to the success of the relationship that you feel comfortable with the lawyer you choose.

Questions you might ask your potential attorney

Entering into an attorney client relationship is an important process. Knowing what to ask a prospective attorney is an essential element of the process. Below are some sample questions to keep in mind when considering who should represent you.

- What is your experience in this area of law?
- If you do not practice in this area of law, could you recommend a lawyer who does?
- Would you provide me with references?
- What are your rates and how often will you bill me?
- Approximately how long will it take to resolve my case?
- How will you keep me informed of progress?
- How can I contact you?
- Who can I talk to if you are unavailable?
- Who else in the office will be working on my case?
- What are my alternatives in resolving the case?
- Do you recommend mediation or arbitration?
- What can I do to help the case?

Do You Have the Legal Right to a Lawyer?

Many people believe that they have a "constitutional" right to legal representation regardless of their ability to pay. This right is limited to those accused of a serious crime. If a person accused of a crime with potential of jail time (such as a serious misdemeanor or felony) does not have the ability to hire an attorney, the court will appoint the Public Defender office to represent the accused. Otherwise, you do not have the "right" to an attorney at public expense.

You always have the right to obtain your own attorney. Several programs exist to help those of limited financial means. **Idaho Legal Aid Services** (commonly referred to as "Legal Aid") has offices at various locations throughout Idaho and can assist income eligible clients in certain kinds of disputes, such as housing and public assistance programs, and domestic violence cases. Check the telephone book for the office nearest you.

To help fill the gap outside what the public defenders and Legal Aid can provide, the Idaho Law Foundation, Inc. operates the **Idaho Volunteer Lawyers Program (IVLP)**. This program recruits attorneys for volunteer legal services. Applicants who are seeking legal services are screened for income eligibility and priority of case type. For example, domestic violence is a high priority; a name change is a low priority. Unfortunately, there simply are not enough resources to serve everyone who needs legal services, but these programs help address the most extreme cases. Calling (208) 334-4510 or writing to Idaho Volunteer Lawyers Program, P.O. Box 895, Boise, ID 83701, can put you in touch with the IVLP. There is also a **Modest Means Program** designed for those individuals of moderate income who could otherwise not afford an attorney. Call the Idaho State Bar at (208) 334-4500 to make an application.

Legal Fees and Expenses

Money is a touchy subject, but fees and other charges **must** be discussed with your lawyer early. **Get any agreement in writing** before any legal work has started. Lawyers are accustomed to addressing the subjects of fees and expenses, so don't be embarrassed to talk about them.

Legal advice does not come cheaply. Some clients are surprised to get a bill from a lawyer for a "simple" one page legal document or advice given over the phone. Lawyer-President Abraham Lincoln once said, "a lawyer's time and advice are his stock in trade." That's still true today. Research and training are behind every document or piece of advice.

There are, however, some broad guidelines to help evaluate whether a particular fee is reasonable:

- the time and work required by the lawyer and any assistants
- the difficulty of the legal issues presented
- how much money other lawyers in the area charge for similar work
- the total value of the claim or settlement
- the experience, reputation, and ability of the lawyer
- the method used to charge fees (more on that to follow)

Types of Fees and Expenses

There are several types of lawyers' fees depending on the type of case.

Flat Fees: These are typically used for routine services such as wills, deeds, adoptions, and uncontested divorces. If complications develop that require additional work, an additional fee may be required.

Hourly Fees: Before agreeing to an hourly fee, have the lawyer estimate how many hours your case may take. Then, make sure you are notified periodically of how many hours the lawyer has put into your case and the amount of the total. Since hourly rates for work done by junior associates, law students, and paralegals are less, make sure the lawyer explains who will be working on the case and that an appropriate hourly rate is set.

Contingent Percentage Fees: The attorney is paid a "contingent" fee only if he or she is successful in recovering money. All contingent fee arrangements must be in writing. Many attorneys take personal injury cases, collection cases, and employment-related injury cases on a contingency fee basis. This allows a client without much money to pursue a claim that would be out of reach if he or she had to pay an hourly fee.

Retainer Fees: There are two kinds of "retainers": those paid as a down payment at the beginning of a case, and those paid monthly or annually (usually by a business) to insure the continuous availability of a lawyer or firm for ongoing, routine legal needs.

Costs and Expenses: Some costs and expenses will be charged regardless of the billing method such as court filing fees, service fees for delivering documents, witness fees, phone calls, etc. These expenses are not part of the legal fees and are often simply called "costs."

You must pay the costs and expenses that relate directly to your case, regardless of the fee arrangement you have with your lawyer. Your lawyer will usually pay these costs as they are incurred, and you will be billed for them at regular intervals or at the close of the case.

How to Save Money in Legal Fees

As with other products and services, you often "get what you pay for" when it comes to legal advice. Do-it-yourself forms might work but may cost more in the long run if there are any complications. You should not expect to get good legal advice without paying for it. Still, you should not pay for more than you get. Pay close attention to your bill, and if you feel that any charge is too high, or if you do not understand a billed item, ask your lawyer to explain.

As a client, you can take the following steps to help keep down your legal costs:

- **Answer all of your lawyer's questions fully and honestly.** No surprises -- it will save on time that might be spent in later investigation of your case and it will help your lawyer do a better job of representing you.
- **Be organized.** Even before your first meeting with your lawyer, think about your legal problem and the information your lawyer will need: names, addresses, telephone numbers, documents, etc.
- **Be brief.** Try to keep your phone calls and visits to your lawyer as short as possible. Remember, you're paying for legal advice, not counseling or friendship. Time spent on the phone with your lawyer will cost you money.
- **Keep your lawyer informed of changes.** Tell your lawyer immediately of changes which might be important to your situation.
- **Keep informed.** Ask for copies of important documents. If you are willing to help out by picking up or delivering documents, or making a few phone calls, let your lawyer know. You should not interfere with your lawyer's work but you can often help speed a case along, reduce your legal costs, and keep yourself better informed by doing some of the work yourself.

Responsibilities of Lawyers and Clients

Lawyers

Every lawyer's actions are controlled by personal judgment, experience, the law, and court rules. Idaho lawyers are also bound by the Idaho Rules of Professional Conduct. If a lawyer's conduct falls below the standards set forth in the Rules of Professional Conduct, the Idaho State Bar can discipline him or her.

A lawyer is also bound by the civil and criminal laws of the land, but because of the special position of trust and confidence in a lawyer/client relationship, lawyers may also be punished for things which are not illegal--such as telling others confidential information about a client or having a conflict of interest with a client. A number of strict rules and common sense guidelines define these responsibilities:

- **Competence.** Every lawyer must aim to provide high quality work following the client's decisions. A lawyer should advise a client of possible actions, even strongly urge a course of action, then act according to the client's choice of action--even if the lawyer would have picked a different route.
- **Diligence.** Every lawyer has a duty to act carefully and as quickly as possible in handling a client's legal problem.
- **Communication.** A lawyer has a duty to communicate effectively with a client.
- **Fees.** The amount the lawyer charges for legal work must be "reasonable" in relation to the services provided.
- **Confidentiality.** A lawyer may not tell anyone else what a client reveals about a case (with certain exceptions for potentially dangerous situations). This is called "attorney/client privilege."
- **Conflicts of Interest.** The Rules of Professional Conduct require a lawyer to be loyal to a client. That means that a lawyer cannot represent two clients who are on opposite sides in the same or two related lawsuits unless both clients give permission. For example, a lawyer should not represent both sides in a divorce no matter how "friendly" it is. Also, a lawyer cannot represent a client whose interests conflict with the lawyer's interest such as drafting a will for a client who is leaving the lawyer property in the will.
- **Keeping a client's property.** If a lawyer holds a client's money or property, it must be kept safely and separately from the lawyer's own funds or property. A lawyer must provide an accounting of your property or money upon your request.

Clients

A good lawyer/client relationship involves cooperation on both sides. As a client, you should do all you can to make sure you get the best possible legal help. To do so, you must hold up your end of the responsibilities.

- **Be honest.** Tell all the facts, good and bad, to your lawyer.
- **Notify your lawyer of changes.** Tell the lawyer promptly about any change or new information that may affect your case. This includes letting your lawyer know if and why you are unhappy with his or her work.
- **Ask for clarification.** If you have any questions or are confused about something in your case, ask your lawyer for an explanation.
- **Be realistic.** There are two sides to every dispute. A lawyer can only handle your legal affairs. Also, keep in mind that most legal matters cannot be resolved overnight; give the system time to work.
- **Pay.** A client has a duty to promptly pay a fair and reasonable price for legal services. When a client fails to pay, the lawyer may have the right to stop working further on the case. Still, the lawyer must then do whatever is reasonably possible to prevent the client's case from being harmed.

What to Do if You Are Not Satisfied with Your Lawyer

If you are unhappy with the lawyer you chose to handle your case and, after a realistic look, you firmly believe you have a worthwhile complaint about your legal representation, there are several things you can do.

- **Talk with your lawyer.** Many problems are caused by a lack of communication. You may be satisfied once you have a good understanding of the situation.
- **Fire your lawyer and hire another.** You decide whom you hire and whether you want to retain his or her services.
- **File a complaint.** If you believe you have a valid complaint involving professional misconduct by your lawyer, you may file a grievance with the Office of Bar Counsel of the Idaho State Bar, P.O. Box 895, Boise, ID 83701, (208) 334-4500.
- **Seek Fee Arbitration.** If you believe you have been charged too much in legal fees, you may seek **fee arbitration** through the Idaho State Bar. This process allows both you and your lawyer to present an argument to an independent panel who makes a binding decision on the proper amount of legal fees. Again, contact the Office of Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, ID 83701, (208) 334-4500.
- **Sue the lawyer for malpractice.** If you believe your lawyer has been negligent in handling your case, and that negligence has ended up costing you money or injuring your legal rights, you may have a legal action against that lawyer.
- **Contact the police.** If you believe that your lawyer has committed a crime, such as stealing your money or property, go to the police and report that crime. This is a last resort, and a step that should be taken only when you feel certain of your position. But if you are certain, do not be intimidated by the fact that your complaint is against a lawyer. The Idaho State Bar administers a **Client Security Fund** to help repay clients whose money has been taken by a lawyer when no other source of payment is available.

What to Look for in an Effective Lawyer

We wish to thank the Honorable Larry M. Boyle, U.S. District Chief Magistrate Judge for granting us permission to re-print the following portion of his book, The Traits, Qualities and Characteristics of Highly Effective Lawyers

The Honorable Larry M. Boyle, U.S. Chief Magistrate Judge for the District of Idaho, has made the following observations concerning his opinion of effective attorneys. Judge Boyle's observations are based on his years in private practice and as a judge.

Integrity and Honesty

A forthright, trustworthy, and reasonable lawyer is a great asset to a client. Any departure from these principles cannot be excused or justified as zealous advocacy. Once a judge or lawyer has been initially misled by another attorney, confidence and trust is lost or damaged. Once trust and respect has been lost, it is often difficult to restore.

When trust and respect are present, counsel are able to work cooperatively, are generally in a better position to reach a fair, balanced resolution of a dispute at substantially less financial and emotional cost to the client, and, as a result, are far more likely to resolve a dispute without necessary court intervention. Clients should expect their attorneys to be honest in dealing with them and with the court.

Competence

Competency is built upon a foundation of quality education, training, mentoring, thoroughness, preparation, experience, punctuality, and continuing development of skills and abilities. Competency is not always measured by financial success. Competency is a developed trait, and when combined with intelligence, integrity, and honesty, will surely lead to trust, effectiveness, respect, and success. Clients should expect their legal counsel to be highly competent.

Preparation

An effective attorney is always well prepared. A prepared attorney always researches controlling law and gathers facts before making demands on other parties or commencing an action.

Moreover, a prepared attorney studies and reviews a client's file, affidavits, submissions, and briefs several days before the scheduled court proceeding and then again the day or afternoon before the court appearance. A prepared attorney always seeks resolution in a cost-effective manner that is mutually beneficial to both parties while strongly advocating his or her client's position. Clients should expect their legal counsel to be well prepared.

Professionalism & Civility

A professional attorney is both courteous and civil with opposing counsel, his or her client, and the court. A professional attorney communicates with opposing counsel on a regular, frequent basis to keep the case or transaction moving. The "meanest SOB" or the "bulldog" is not necessarily the most effective attorney. Oftentimes such tactics do not advance the client's interest. Similarly, courts are not impressed with attorneys who waste the court's time with matters that could be reasonably settled.

In addition, a professional attorney communicates with clients on a regular basis to report on the status and any new developments in the client's case. Furthermore, a professional attorney responds to a client's telephone calls and requests in a timely manner. A

professional attorney always listens to and learns from the client's questions and concerns. Clients should expect their attorneys to be professional and civil in handling their legal matters.

Conclusion

The legal profession is here to serve both public and private needs. The better you understand your rights and responsibilities as a consumer of legal services, the better your legal needs will be met.